
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-02-CF-569
)	
MRJ, Inc.)	NAL/Acct. No. 200332340002
WWYO)	
Pineville, West Virginia)	FRN: 0005-9955-50

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 26, 2002

By the District Director, Columbia Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that MRJ, Inc ("MRJ") has apparently violated Sections 11.52(a), 17.4, 73.49, and 73.3526(c) of the Commission's Rules¹ ("Rules"), by failing to conduct weekly EAS tests of the EAS header and EOM codes, by failing to register its antenna structure with the Commission, failing to enclose the AM antenna in an effective locked fence, and failing to allow access to the public inspection file. We conclude that MRJ is apparently liable for a forfeiture in the amount of twenty two thousand dollars (\$22,000).

II. BACKGROUND

2. On August 14, 2002, an agent from the Commission's Columbia, Maryland office conducted an inspection of station WWYO, Pineville, West Virginia for compliance with FCC Rules. The agent observed that the station did not have an EAS operating handbook, had not conducted weekly tests of the EAS header and EOM codes during the period June 18, 2002 to August 13, 2002, did not monitor two EAS sources, failed to register the antenna structure, failed to enclose the antenna in an effective locked fence, failed to maintain the carrier frequency within tolerance, failed to have the chief operator review the station records at least once per week, and failed to allow access to the public inspection file.

3. On August 27, 2002, the Columbia Office issued a Notice of Violation to MRJ for violation of Sections 11.15, 11.52(a), 11.52(d), 17.4, 73.49, 73.1545(a), 73.1870(c)(3), and 73.3526(c) of the Rules². In reply by fax dated September 5, 2002, MRJ stated that they were going to have a consultant fill out the antenna registration form, a contractor had reset the fence posts, and the licensee stated the public inspection file was in a publicly accessible location.

¹ 47 C.F.R. §§ 11.52(a), 17.4, 73.49 and 73.3526(c).

² 47 C.F.R. §§ 11.15, 11.52(d), 73.1545(a), 73.1870(c)(3).

4. On September 20, 2002, the Columbia Office issued a Continuation of Notice of Violation ("Continuation") to MRJ for Sections 11.52(d), 17.4, 73.49, and 73.1545(a). In the Continuation, the Columbia Office required further clarification of the actions taken to correct the violations for failing to monitor two EAS sources, failure to register the antenna, failure to enclose the antenna in an effective locked fence, and failure to maintain the carrier frequency within tolerance. MRJ adequately addressed corrective action of the other violations in its reply of September 5, 2002.

5. On September 30, 2002, MRJ replied to the Continuation of Notice of Violation. In the reply, MRJ stated that the EAS equipment was back on line, a contract to repair the fence and gate had been let, the FAA form 7460-1 was being completed, and the frequency tolerance problem was being worked on.

III DISCUSSION

6. Section 11.52(a) of the Rules requires that broadcast stations perform weekly tests of the EAS header and EOM codes. The agent could not find any record to indicate that the required weekly tests of the EAS header and EOM codes had been performed during the period June 18, 2002 to August 13, 2002.

7. Section 17.4 of the Rules requires antenna structures that are over 200 feet in height be registered with the Commission. As of the release date of this notice, MRJ has not registered the 331-foot antenna structure.

8. Section 73.49 of the Rules requires that antennas that have radio frequency potential (voltage) at the base of the tower must be enclosed within an effective locked fence or other enclosure to protect the public. The agent found that the metal poles supporting the fence gate were rusted off at ground level and unable to provide adequate support for the gate. In addition, the top half of the gate had the wire mesh drawn back allowing access to the base of the tower, making the base of the tower a safety hazard to the public.

9. Section 73.3526(c) of the rules requires that the public inspection file be available for public inspection at any time during normal business hours. At the inspection, the station personnel were unable to produce the public file.

10. Based on the evidence before us, we find that MRJ willfully³ and repeatedly⁴ violated Section 11.52(a) of the Rules by failing to conduct weekly EAS tests during the period June 18, 2002 to August 13, 2002, and Sections 17.4, 73.49 and 73.3526(a) of the Rules by failing to register its antenna structure, failing to enclose the antenna structure in an effective locked fence and failing to provide access to the public inspection file. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon.*

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

denied, 15 FCC Rcd 303(1999) (“*Forfeiture Policy Statement*”)⁵, sets the base forfeiture amounts at \$2,000 for failure to make required measurements or conduct required monitoring (e.g. failure to conduct weekly EAS tests), \$3,000 for failure to file the required forms or information (e.g. failure to register the antenna structure), \$7,000 for failure to enclose the AM antenna in an effective locked fence, and \$10,000 for violation of the public file rules. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934 (“Act”), as amended,⁶ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a twenty two thousand dollar (\$22,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ MRJ is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty two thousand dollars (\$22,000) for willfully violating Sections 11.52(a), 17.4, 73.49, and 73.3526(c) of the Rules.

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, MRJ SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332340002, and FRN 0005-9955-50.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332340002.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, and 0.311.

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16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

17. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

18. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to MRJ, Inc., P.O. Box 647, Bluefield, West Virginia 24701.

FEDERAL COMMUNICATIONS COMMISSION

Charles C. Magin
District Director
Columbia Office

⁹ See 47 C.F.R. § 1.1914.